

Rule Interpretation Summary Form

Code Number:	261-21.001
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Rule/Regulation Citation(s):	Federal Rule: <u> X </u> State Regulation: <u> </u> 40 CFR §261.21(a)(3), Characteristic of ignitability, states that “[a] solid waste exhibits the characteristic of ignitability if a representative sample of the waste has any of the following properties...It is an ignitable compressed gas as defined in 49 CFR 173.300 and as determined by the test methods described in that regulation or equivalent test methods approved by the Administrator under §§262.20 and 260.21.”
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Description:	Applicability of RCRA to compressed gases from containers
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Interpretation Request:

Do compressed gases, when released from product storage/transportation tanks/containers through a conveyance system to a control device, remain under the requirements of RCRA?

Determination:

<p>The Waste Rule Interpretation Team (WRIT) reviewed the information provided by the Investigator, 30 TAC Chapter 335 requirements, 40 CFR 261 definition of solid waste and hazardous waste, and the July 11, 1995 Interoffice Memorandum from Minor Hibbs prior to making a determination.</p> <p>Based on available information the team members made the following determination(s):</p> <ol style="list-style-type: none"> 1. The facility in question handles compressed gases in containers. Ignitable compressed gases are regulated as a hazardous waste under 40 CFR 261.21(a)(3); 2. Inclusion of compressed gases in the definition of hazardous waste is dependent upon the absolute pressure of the gas. If the gas exceeds the pressure limits outlined in 49 CFR 173.300 it is a hazardous waste, if the gas does not exceed the pressure limits described above it is a solid waste but not a hazardous waste; 3. The facility is required to conduct a hazardous waste determination as per 40 CFR 262.11 and 30 TAC 335.62; 4. If the facility determines that the waste is a hazardous waste, then 30 TAC 335.2 {Permit Required} would apply. Based on information from the Investigator, the facility is burning/flaring the compressed gas which is considered to be processing. Processing of a hazardous waste requires a permit; 5. The July 11, 1995 Interoffice Memorandum from Minor Hibbs should be interpreted to apply to gases and vapors from the cleaning or product tanks as opposed to the discarding of an ignitable hazardous waste. Tanks or containers containing an ignitable compressed gas (and any other gases specifically identified as a hazardous waste in 40 CFR 261, Subpart D) that are destined for discard should be managed as a hazardous waste. All other vapors or gases released from tanks or containers not containing a compressed gas which is a hazardous waste are regulated under the Clean Air Act. 6. The facility could be required to obtain an air permit under either 30 TAC 106 {Permit by Rule} or 30 TAC 116 {Permit Required}. Requirement for an air permit is dependant upon the emission rate from the burning/flaring of the compressed gas.

Background Information and Rationale:

The railcar reconditioning facility periodically receives compressed gaseous containers which contain or contained varying amounts of product liquified petroleum gas or ethylene. Prior to any repair activities performed on the railcars, the railcars are connected directly to a flare by way of a hose and subsequently vacated by flaring until the railcar is equivalent to atmospheric pressure. Recorded amounts in the railcars prior to flaring vary anywhere from 10 pounds per square inch (psi) to 100 psi. It was explained that capturing the compressed gas for resale, heating opportunities, using for its intended purpose, etc., was cost prohibitive and flaring was the only option.

In reviewing numerous documents, it is the interpretation of the Regional Office that since the facility is not able to use the compressed gas left in the railcars (i.e., heating, cooking, resale, etc.), it becomes a discarded material. Thus, it would meet the definition of a solid waste and subsequently a hazardous waste which should require a hazardous waste disposal permit for any flaring of compressed gases over 40 psi.

This interpretation is in part based on the reading of 30 TAC §335.1(124)(relating to Definition of a Solid Waste). This states that a solid waste is “any...discarded material, including...contained gaseous material...which are abandoned, recycled, or inherently waste-like.” It goes on to say that abandonment consists of being disposed of, burned, or incinerated. Specific solid waste exemptions and exceptions were also reviewed.

40 CFR §261.4(c) (relating to Hazardous wastes which are exempted from certain regulations) states that a “hazardous waste which is generated in a product or raw material storage tank, or product or raw material transport vehicle or vessel is not subject to regulation under parts 262 through 265, 268, 270, 271, and 124 until it *exits* the unit in which it was generated or unless it remains in the unit more than 90 days after the unit ceases to be operated for the manufacturing, storage, or transportation of product or raw material” (emphasis added).

A July 11, 1995 IOM addresses ignitable gas streams from cleaning product tanks. Control of emissions from gas venting of product storage tanks while filled with product is regulated under the Clean Air Act. A hazardous waste determination is required for residue(s) to be discarded from the product storage tank and generated from the cleaning of the tank. The hazardous waste determination should make a distinction between a compressed ignitable gas contained in the product tank and contained ignitable vapors in accordance with the regulatory definition of a hazardous waste. Contained ignitable vapors that are released from the vapor space of the product storage tank and from liquid phase of the product residue in the tank during cleaning that are not hazardous wastes are regulated under the Clean Air Act. Compressed ignitable gases that are discarded are regulated under the Resource Conservation & Recovery Act (RCRA) as a hazardous waste and also under the Clean Air Act.

Federal Register Vol. 54 No. 236 (December 11, 1989) pg 50973, states that their authority to identify or list a waste as hazardous under RCRA is limited to containerized or condensed gases.

40 CFR §261.21(a)(3), states that compressed gases as defined in 40 CFR §173.300 are a characteristic hazardous waste for ignitability. 40 CFR §173.300(a) states “[t]he term “compressed gas” shall designate any material or mixture having in the container an absolute pressure exceeding 40 psi at 70° F. or, regardless of the pressure at 70° F., having an absolute pressure exceeding 104 psi at 130° F.” Therefore, if the material is discarded and exceeding the absolute pressure specified in the regulation, it would be considered a hazardous waste.

Based on the above information, the Region believes that the regulated entity is abandoning the compressed gas by burning. Since the compressed gas is being emitted into the air via the flare, on-site processing is taking place as defined in §335.1(112). Therefore, the regulated entity is subject to the hazardous waste permitting requirements.

The July 11, 1995 memo from Minor Hibbs initially appeared to conflict with RCRA regulations regarding compressed gases. However, upon further review, it was apparent that the memo was not applicable to the facility in question.

The memo is not applicable to compressed gases which meet the definition of a hazardous waste, even if they are from product tank cleaning. The memo states that “the Commission uses EPA’s definitions for hazardous wastes.” Therefore, if the compressed gas meets the EPA definition of hazardous waste, it is also considered to be a hazardous waste by the TNRCC. The definition of a characteristically ignitable hazardous waste in 40 CFR 261.21 includes the definition of ignitable compressed gas in 49 CFR 173.300. 49 CFR 173.300 defines an ignitable compressed gas as “any material or mixture having in the container an absolute pressure exceeding 40 psi at 70° F. or, regardless of the pressure at 70° F., having an absolute pressure exceeding 104 psi at 130° F. as determined by ASTM Test D0323.”

The definition also includes “flammable compressed gas.” Since the p.s.i. measurements recorded by the investigator were “gauge” measurements and not within the specific guidelines outlined in the compressed gas definition in 49 CFR 173.300, it has not been determined whether the compressed gas at the facility in question is in fact a hazardous waste.

Flaring/burning is considered by the TNRCC to be “processing.” In accordance with 30 TAC 335.4, processing of hazardous waste requires a permit.

Analysis of Impact/Consequences of Determination:

This facility would possibly be required to obtain hazardous waste and air permits. Additionally, processing hazardous waste without

the applicable permit is considered to be a Category A violation by the Enforcement Initiation Criteria and requires an automatic referral for formal enforcement action(s).